

*Government's Exhibit 11*

were eating while the ballgame was going on; I think Wednesday,—Tuesday,—the day of the ballgame; the ballgame was on. We ate and we came back here.

Mr. Tendy: Mr. Foreman, would you instruct Mr. Pappadio to return on Tuesday at ten o'clock.

Foreman: You're instructed to return on Tuesday at ten o'clock.

Witness: This Tuesday?

Mr. Tendy: This coming Tuesday; that's right; at ten o'clock.

Witness: I don't remember what day of the month it is.

Foreman: The 13th.

(Witness leaves room.)

**Government's Exhibit 12**

October 13, 1964

Sep. Spl. Re: John Doe

(fol SA) Mr. Tendy, Mr. Lawler

Andimo Pappadio

ANDIMO PAPPADIO, called as a witness, and having been duly sworn by the Foreman of the Grand Jury, testified as follows:

Mr. Tendy: For the record this is Andimo, A-n-di-m-o, Pappadio, P-a-p-a-d-i-o.

Q. Did I spell it properly? (No response.)

Q. Did I spell it right? A. Yes, sir.

Q. Mr. Pappadio, I want to return to some questions that we were asking of you last time we were here. Since you were served with a subpoena to appear before this particular Grand Jury how many times have you met with Thomas Lucchese? A. I can't recall the amount of times.

Q. Give me your best recollection, sir? A. I couldn't recall how many times.

Q. But you did meet with him? A. Yes, I met.

Q. More than once? A. More than once.

Q. Do you recall where did you meet him on these occasions? A. I met him in the street.

Q. Where on the street? A. Down in the street.

Q. Where? A. 36, 37, 38; any street there.

Q. How many times did you meet him on the street? A. Various times. A few times.

Q. Was he alone? A. Was he alone?

Q. Yes. A. Yes, he was alone.

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Q. Were you alone? A. Yes, sir.

Q. Were these chance meetings or were they arranged?  
A. No; by accident. It was not arranged.

Q. Did you talk with him when you met him on the street on these occasions? A. We said hello to one other. I kept going about my business; he was probably going about his business.

Q. Did you talk about these Grand Jury proceedings when you met him on the street? A. No, sir.

Q. Where else did you met him? A. Where else have I met him?

Q. Yes? A. I answered the other day, Mr. Tendy, we met with lawyers on a few occasions.

Q. Who were the attorneys that were present at these meetings? Give me the names. A. I'd like to take that up with my attorney.

Q. Go ahead.

(Witness leaves room and returns.)

Q. Have you consulted with your attorney, Mr. Papadio? A. I feel I should not answer any questions regarding my meetings with lawyers or where I met since this is a violation of my rights under the First, the Fifth and the Sixth Amendments, especially since I am under indictment and allegations have been made about me in the Valachi hearings.

Q. Aside from the meetings on the street with Luchese that you have talked about, where also did you meet with Luchese since you first appeared before this Grand Jury, or let me amend that, since the subpoena for your appearance at this Grand Jury was served upon you? A. That's a question I answered the other day, Mr. Tendy. I said I went to

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his home once about three or four months ago. I may be wrong, maybe two, three weeks either way.

Q. I understand that. Besides his home, where else have you met him? A. I don't recall meeting him any place else.

Q. Have you met him any place else? A. I said we met with lawyers and that I gave you the answer on the First, Fifth and Sixth.

Q. Oh; maybe I don't understand you, Mr. Papadio. You told me that you met him by chance on the street several times. You told me you were at his home once. Do I understand you to say that in addition to these occasions you did meet with him but with lawyers but you're not going to answer questions concerning those occasions for the reasons you just read; Is that what you're saying? A. Tha's what I said.

Q. Other than the meeting at his home and other than the meeting on the street, there were other meetings with him? A. That's what I said.

Q. O.K. Who else was present at these meetings besides you and Luchese and the lawyers? Do you understand my question, sir? A. Who else was there?

Q. Yes; excluding yourself, Luchese and the attorneys, who was present at these meetings? A. I'll have to talk to my attorney.

Mr. Tendy: Go ahead.

(Witness leaves room and returns.)

Q. Have you consulted with your attorney, Mr. Pappadio? A. I talked to my attorney.

Q. Yes? A. And I refuse to answer. I respectfully refuse to answer under the First, the Fifth and the Sixth Amendment.

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Q. What time of the day did these meetings take place, Mr. Pappadio? A. I respectfully refuse to decline to answer under the First, the Fifth and Sixth Amendment.

Q. How long did the meetings last? A. I respectfully decline to answer under the First, the Fifth and the Sixth Amendments.

Q. Who arranged these meetings? A. I'd like to talk to my attorney.

Q. Do you understand my question? A. Who arranged these meetings, you said.

Q. That's right; you understand my question. A. I'd like to talk to my attorney.

(Witness leaves room and returns.)

The Witness: I respectfully decline to answer under the grounds of the First, the Fifth and the Sixth Amendment.

Mr. Tendy: Bear with me a minute, please.

Q. Let me ask you this, Mr. Pappadio. Is it your testimony that excluding the time you met Luchese at his home and the times you met him on the street and on the other occasions where you met with him, there were attorneys present? Do you understand my question? A. Say it over again.

Q. Sure. Is it your testimony that excluding the occasions where you met with Luchese, the occasion where you met with Luchese at his home and the occasions where you met with him on the street, as you told us about earlier, and the other times you met with him, there were attorneys present? A. I refuse to answer on the grounds of the First, the Fifth and Sixth Amendment. I think you're getting tricky, Mr. Tendy. If you are going to get tricky, Mr. Tendy, I'm going

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to sit here without going outside, without answering, and you do what you want to me. I'm here to give you testimony to help you to help everybody. If you are going to get tricky, I'm just going to sit here. You can lock me up, you can beat me, you can break my head or do anything and I won't answer. I don't think you should get tricky. You're here to try to get some testimony but you're getting tricky.

Q. Mr. Pappadio, if there's any question I ask you and you really don't understand it, you can tell me you don't understand it and I'll try to rephrase it, I'll try to explain it to you, and if you wish you can go out and speak to your lawyer. There hasn't been a single occasion where I said you couldn't. A. You have been kind enough to do it.

Q. This last question I asked you once and then I asked you if you understood it; then I asked you again. I just want you to know it is not my purpose to be tricky, and if there's any question that you really don't understand, simply tell me and I'll do my level best to phrase it so you do understand. I don't want you to answer any question that you don't understand.

I don't want you to answer any question unless you understand it completely; and if I can make a suggestion to you, Mr. Pappadio, if you don't understand a question, not only do I suggest that you don't answer it, but I suggest to you that you don't refuse to answer it. A. Thank you.

Q. You understand? A. Yes.

Mr. Tandy: Bear with me a minute, Mr. Foreman and Mr. Witness. Mr. Pappadio, would you step outside, please.

Witness leaves room.

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Judge Herlands: You may proceed. I see Mr. Paddadio.

Mr. Lawler: May the record reflect that this is a closed Grand Jury proceeding, that the only individuals present are the members of the Grand Jury, myself, Mr. Lawler, Mr. Tendy, the Grand Jury stenographers and the witness, Andimo Pappadio. Mr. Kossman, Mr. Pappadio's attorney is outside. The Government has no objection to his being present during these proceedings. I think it might facilitate matters if he were present.

Judge Herlands: All right, we'll have Mr. Kossman come in.

(Mr. Kossman enters the courtroom.)

Judge Herlands: All right, Mr. Kossman is here now as the attorney for the witness, and Mr. Lawler, if you'll tell me what this is about, we'll proceed.

Mr. Lawler: Your Honor, the Grand Jury is here seeking a direction from the Court to order the witness, Andimo Pappadio, to answer certain questions. If I might just state some of the background on the record—on August 4th the witness—

Judge Herlands: You may be seated, Mr. Kossman.

Mr. Lawler: On August 4th of this year, as Your Honor knows, the witness, Pappadio, was granted immunity under Title 18, United States Code, Section 1406. Again last Friday the witness was brought into this room before Your Honor, at which time the provisions of that statute were explained to him. He was ordered to answer certain specific questions and,

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in addition, Your Honor explained that since he could no longer incriminate himself under the provisions of that statute, he could no longer claim that privilege as to any other questions which he was asked. This morning Mr. Pappadio appeared before the Grand Jury. At that time he was asked a series of questions, and he refused to answer these questions on the basis of the First, the Fifth and the Sixth Amendments. The Grand Jury stenographers have those questions which he was asked, and I would ask them to read at this time those questions.

Judge Herlands: Are these questions that I've canvassed previously?—

Mr. Lawler: No, they're not.

Judge Herlands: —or additional ones.

Mr. Lawler: They're additional ones.

Judge Herlands: All right, we'll proceed. May we have the name of the Grand Jury reporter who's reading.

Miss Aronson: Salud Aronson.

Judge Herlands: And you're now reading from your stenotype notes?

Miss Aronson: Yes, I am, Your Honor.

Judge Herlands: All right, will you read—by the way, are these the questions and answers, the entire record, or just the questions concerning which there has been a refusal to answer?

Mr. Lawler: Only the questions concerning which there has been a refusal to answer.

Judge Herlands: All right, well, we'll hear them.

Miss Aronson: Question, "Who were the attorneys that were present at the meetings? Give me the names." Answer: "I'd like to take that up with my attorney."



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Question: "Go ahead."

Witness leaves room and returns.

Question: "Have you consulted with your attorney, Mr. Pappadio?" Answer: "I feel I should not answer any questions regarding my meetings with lawyers or where I met, since this is a violation of my rights under the First, the Fifth and the Sixth Amendments, especially since I'm under indictment and allegations have been made about me in the Valachi hearings."

Mr. Lawler: Your Honor, at which point another Grand Jury stenographer took over. I would ask her to read the following questions.

Mrs. Connolly: Excuse me—I'll have to read the whole series for the background.

Judge Herlands: May we have your name for the record.

Mrs. Connolly: Margaret T. Connolly. Shall I stay here or go there?

Judge Herlands: Wherever it's most convenient.

Mrs. Connolly: "Aside from the meetings on the street with Lucchese that you've talked about, where else did you meet with Lucchese since you first appeared before this Grand Jury, or—let me amend that—since the subpoena for your appearance before this Grand Jury was served upon you?" "That's the question I answered the other day, Mr. Tendy. I said I went to his home once about three or four months ago. I may be wrong, maybe two or three weeks either way."

Mr. Tendy: "I understand that. Besides his home, where else have you met him?" "I don't recall meeting him any place else."

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"Have you met him any place else?" "I said we met with lawyers and that I gave you the answer on the First, Fifth and Sixth."

Mr. Tendy: "Oh, maybe I don't understand you, Mr. Pappadio. You told me that you met him by chance on the street several times. You told me you were at his home once. Do I understand you to say that, in addition to these occasions, you did meet with him, but with lawyers, but you're not going to answer questions concerning those occasions for the reasons you just read? Is that what you're saying?"

Answer: "That's what I said."

Question: "Other than the meeting at his home and other than the meeting on the street, there were other meetings with him?" Answer: "That's what I said."

Question: "Okay. Who else was present at these meetings besides you and Lucchese and the lawyers? Do you understand my question, sir?" Answer: "Who else was there?"

Question: "Yes. Excluding yourself, Lucchese and the attorneys, who was present at these meetings?" Answer: "I'll have to talk to my attorney."

Mr. Tendy: "Go ahead."

Witness leaves room and returns.

Question: "Have you consulted with your attorney, Mr. Pappadio?" Answer: "I talked to my attorney and I refuse to answer. I respectfully refuse to answer under the First, the Fifth and the Sixth Amendment."

Question: "What time of the day did these meetings take place, Mr. Pappadio?" "I respectfully

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refuse, decline, to answer under the First, the Fifth and Sixth Amendment."

Question: "How long did the meetings last?"

Answer: "I respectfully decline to answer under the First, the Fifth and the Sixth Amendments."

Question: "Who arranged these meetings?" Answer: "I'd like to talk to my attorney."

Question: "Do you understand my question?" Answer: "Who arranged these meetings, you said."

Question: "That's right. Do you understand my question?" Answer: "I'd like to talk to my attorney."

Mr. Tendy: "Okay."

Witness leaves room and returns and states: "I respectfully decline to answer under the ground of the First, the Fifth and the Sixth Amendment."

"Let me ask you this, Mr. Pappadio—is it your testimony that, excluding the time you met Lucchese at his home and the times you met him on the street, and on the other occasions where you met with him there were attorneys present? Do you understand my question?" Answer: "Say it over again."

Question: "Sure. Is it your testimony that, excluding the occasions where you met with Lucchese, the occasion where you met with Lucchese at his home, and the occasions where you met with him on the street, as you told us about earlier, and the other times you met with him there were attorneys present?" Answer: "I refuse to answer on the grounds of the First, the Fifth and the Sixth Amendments. I think you're getting tricky Mr. Tendy."

Should I continue, Mr. Tendy?

Mr. Tendy: [Nods]

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"If you're going to get tricky, Mr. Tendy, I'm going to sit here without going outside, without answering, and you do what you want to me. I'm here to give you testimony, to help you, to help everybody. If you're going to get tricky, I'm just going to sit here. You can lock me up, you can shoot me, you can break my head or do anything and I won't answer. I don't think you should get tricky. You're here to try to get testimony, but you're getting tricky."

Question: "Mr. Pappadio, if there's any question I ask you and you really don't understand it, you can tell me you don't understand it and I'll try to rephrase it, I'll try to explain it to you, and if you wish you can go out and speak to your lawyer. There hasn't been a single occasion where I said you couldn't." "You have been kind enough to do it."

Question: "The last question I asked you once and then I asked you if you understood it. Then I asked you again. I just want you to know it's not my purpose to be tricky, and if there's any question that you really don't understand, simply tell me and I'll do my level best to phrase it so you do understand. I don't want you to answer any question that you don't understand. I don't want you to answer any question unless you understand it completely; and if I can make a suggestion to you, Mr. Pappadio, if you don't understand a question, not only do I suggest that you don't answer it, but I suggest to you that you don't refuse to answer it." Witness: "Thank you."

Question: "You understand?" Answer: "Yes."  
Witness leaves room.

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Oh, no, excuse me.

"Would you step outside, please."

Witness leaves room.

Mr. Lawler: Your Honor the questions which the witness refused to answer on the basis of the First, Fifth and Sixth Amendments are the questions which we would ask the Court to direct him to answer.

Mr. Kossman: May I—

Judge Herlands: Mr. Kossman, you want to say anything?

Mr. Kossman: May it please the Court, mindful of Your Honor's admonition that when we go back, that we shouldn't object to frivolous questions, I think that—that the witness—I mean when he came back, he wasn't asked—or if he was asked, just a few of the questions that the Government came down and asked your Court to—for an order and which your Court, after argument, did order. Now, I think—I don't know, they would know best,—it's very difficult to communicate with the client to know how many questions—but I think he only answered two or three of those questions, although he was prepared to answer every one of them in pursuance to Your Honor's order. Now they go into a different thing, different questions, altogether, which involve the most sacred relationship, really,—attorneys and clients. Now, he stated that he was under indictment. He stated,—because this is a very unusual type of case—He stated that—you told me that—"It's been alleged, sir, that you are a member of this particular group. It's alleged that one of these illegal activities is the—" —he also stated. Now he's prepared to answer those questions if they've not already asked him. I think they haven't.

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Judge Herlands: You're not addressing yourself to the issue.

Mr. Kossman: Well, I'll put it to you this way,—

Judge Herlands: Just a minute, Mr. Kossman.

Mr. Kossman: I beg your pardon.

Judge Herlands: The only thing performing now is whether you're going to answer these questions.

Mr. Kossman: Well, if Your Honor pleases, now they're asking questions not that he was originally ordered.

Judge Herlands: We know all that.

Mr. Kossman: Now, I submit, based on—and it's very hard for me to follow these questions, I mean in terms—but, generally, they speak of his meetings with lawyers and was anybody present in meetings of lawyer, and I suggest that, number one, it's not within the scope of the area for which it sought immunity. Now, in the Piemonte case the Government attorney asked this question, quote, "Did your lawyer advise you, Mr. Piemonte, on those matters that you pleaded guilty to in the indictment, that you had no constitutional privilege against self-incrimination?" However, the Government, in order to avoid any argumentative opportunities as to the scope of the area for which it sought immunity, did not attempt to secure an order directing answers for the particular questions relating to matters involved in his former conviction and, in fact, United States Attorney told the District Judge in seeking the order, so that the Court could not have a misconception of the idea of Government counsel in this matter, "We, too, think that the constitutional privilege claimed by the witness is well taken in this matter." Now, I don't know if I've made myself clear,—

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Judge Herlands: You've made yourself very clear, and it's also very clear that you're not directing yourself to the matter.

Mr. Kossman: My thought is this, that in the area—

Judge Herlands: What area? They're not asking him about communications with the lawyers.

Mr. Kossman: Well, they're asking who the names of the lawyers are,—

Judge Herlands: That's all right.

Mr. Kossman: —where did they meet,—

Judge Herlands: That's all right.

Mr. Kossman: --who was present.

Judge Herlands: That's all right.

Mr. Kossman: Well,—

Judge Herlands: Well, what? You know that the privilege between attorney and client only relates to communications.

Mr. Kossman: Well, if the Court please, the question—

Judge Herlands: Now, look, I don't want to waste any time. If you'll address yourself to any or all of the questions involved here, I'll listen to you for as much time as you want, but I don't want to spend time listening to matters immaterial and irrelevant.

Mr. Kossman: But the question is—is this relevant to the inquiry?

Judge Herlands: It's relevant.

Mr. Kossman: "Who was present?"

Judge Herlands: Precisely. This is a Grand Jury investigation. The scope of the inquiry is of the broadest character known to the law.

Mr. Kossman: But there's limitations.

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Judge Herlands: There are limitations. They can't go outside the scope of their legitimate concern, but when they're conducting an investigation of this kind and character, they have a right to find out with whom the witness met and where and when and who was present. Now, where the witness meets with a lawyer and the lawyers are the only ones present—and I want to repeat that, where the meeting is only with the lawyer, with no one else present—and they're meeting in the capacity of an attorney and client, then, of course, as the Assistant United States Attorneys, themselves, know, the communications are privileged; but if he meets with lawyers and there are other people present, that destroys the confidentiality of the communications.

And going beyond that, regardless of questions relating to communications in the presence of third parties, it is outside the scope of the confidentiality rule to ask a witness who his lawyers were, where they met and when they met because that still does not cover communications.

Now, that's rudimentary, and the most ingenious argument can't get away from those principles of evidence.

Now, if there's any light you can shed on the issues that are involved and posed by these questions, I shall be delighted to give you every opportunity, but it would seem to me from what you have said thus far that you have gone off on tangential matters.

Mr. Kossman: Well, of course, I was comparing it to the question about, did your lawyer advise you, but Your Honor, you have eliminated all communications.



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Judge Herlands: There is no statement here about advice. There was no question about advice of lawyers. Moreover, hypothetically, and it's only hypothetical, even if the lawyer gave him advice but there were third party persons present, that would destroy the confidentiality of the communication, but that's only hypothetical because they haven't reached that point, if they ever do.

Mr. Kossman: I think the privilege extends in the case of lawyer's employees who would be present, but we haven't reached—

Judge Herlands: You haven't reached the confrontations and admissions as to whether or not a law clerk or partner or stenographer who works for the lawyer is considered as part of the personnel of the lawyer. We haven't come to that. There are cases that deal with that. This is an easy case.

Mr. Kossman: Well, of course, if—if the Court pleases, the privilege belongs to the client, not the attorney.

Judge Herlands: But he's acting under advice of counsel.

Mr. Kossman: I can't say he's acting under advice of counsel. Counsel explains to him certain things, but—

Judge Herlands: Well, I'm ready to instruct him to answer each and every one of the questions that have been put on the record this morning.

Mr. Kossman: I wish—I just can't grasp—I mean, generally, I have your Honor's explanation—

Judge Herlands: Mr. Pappadio, will you step forward and sit at the table where Mr. Kossman is, at this chair.

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Do you want me to explain it to him again or do you feel you want to explain.

Mr. Kossman: Well, I'd rather your Honor would explain it, but I'd like to have the particular question, what question—I mean, each question, because some seem repetitious: did you meet by accident and did you not meet by accident, and I don't know what all these questions involve.

Judge Herlands: I'll have the Grand Jury Reporter who was reporting the proceedings reread question by question the questions that were read by the other Grand Jury Reporters, and if you will hesitate between each question I will then make a ruling with regard to that question.

(To Reporter): You are now going to report what Miss Cordes is going to read.

(To Miss Cordes): While you're looking I'll give certain general instructions to the witness.

Mr. Pappadio, nobody wants to invade the right that you have to talk with a lawyer, whether a lawyer in the past or now. If you had conversations with the lawyer at any time and you spoke with the lawyer and the lawyer spoke with you, what you told the lawyer and what the lawyer told you is confidential and you don't have to answer any question as to what the lawyer told you or you told the lawyer.

Now, if there was somebody in the lawyer's office present, like the lawyer's partner or the lawyer's secretary, that also does not destroy the confidential character of what you told the lawyer and what the lawyer told you, because those people who work for the lawyer are considered as part of the lawyer's staff, and that privilege would cover it.

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Now, the prosecutor has a right to ask you when you met the lawyer, where you met the lawyer, whether anybody was present, who was present, and questions like that, because the law only keeps confidential what the lawyer said to you and what you said to the lawyer, but the privilege of confidential communications does not apply to anything other than the communications, which in plain English means what you tell the lawyer and what the lawyer told you, but if they ask you who the lawyer was, where is his office, who was present, when did you meet, so forth and so on, that's not confidential. Do you understand?

Mr. Pappadio: (Nods.)

Judge Herlands: We'll see how the questions and answers fit in within that scope.

Mr. Kossman: Maybe if I had an opportunity in the light of Your Honor's explanation to go over the language with him.

Judge Herlands: Well, we'll do it right now. These questions are very simple. You can sit at your table; nobody will hear what you tell him. We'll take the questions up seriatim. You can sit back there at your own table, Mr. Kossman, so you will be able to talk audibly to your client but inaudibly so far as the government lawyers are concerned.

All right, we'll take them up question by question.

Miss Cordes, Reporter: "Who were the attorneys that were present at the meetings? Give me the names." Now, do you want the answers?

Judge Herlands: No.

Miss Cordes: There was a colloquy and he went outside and came back. Then that went over to the next question.

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Judge Herlands: Well, was that question answered or not answered?

Miss Cordes: No. Well, he went out to see the attorney. Do you want the answer?

Judge Herlands: Yes, I'd like to get the answer on the record.

Miss Cordes: I'll read it. "Answer: I'd like to take that up with my attorney. Question: Go ahead. Witness leaves room and returns.

Question: Have you consulted with your attorney, Mr. Pappadio?

Answer: I feel I should not answer any—"

Mr. Kossman: I don't want to impose on you but could you speak louder?

Judge Herlands: That's Miss Cordes' normal voice.

Miss Cordes: I'll raise it.

Judge Herlands: May I suggest that you move over with your client and you can get up close to the lectern.

All right, we're still on the first question. He went out and came back and now we have the question.

Miss Cordes: Do you want me to start over?

Mr. Kossman: I guess you better.

Miss Cordes: "Question: Who were the attorneys that were present at the meetings. Give me the names. Answer: I'd like to take that up with my attorney. Question: Go ahead." Witness leaves the room and returns.

"Question: Have you consulted with your attorney, Mr. Pappadio? Answer: I feel I should not answer any questions regarding my meetings with lawyers or where I met since this is a violation of

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my rights under the First, Fifth and Sixth Amendments, especially since I'm under indictment and allegations have been made about me in the Valachi hearings."

Judge Herlands: That's the end of that question.

Miss Cordes: At this point another reporter took over and there was a little colloquy there and then her first question.

Judge Herlands: All right, now, we'll hold that the question which has been under discussion will have to be answered and I direct the witness to answer that question.

Mr. Kossman: May I have a conference?

Judge Herlands: You can go ahead and talk with him. The record will show that Mr. Kossman and the witness are conferring.

Mr. Kossman: I might say some of the difficulty comes, I'm sorry, with "present at the meetings." I mean, now, he has been under indictment since 1958. Now he's had numerous attorneys and numerous meetings and here he might answer a question, I mean—and from the nature of the question itself, "who were the attorneys present at the meetings?" all in that context, since he's first been subpoenaed before this Grand Jury, February 3, 1964? Attorneys since February also includes February 3, 1964?

Judge Herlands: If there's any question that isn't clear or the witness feels that he can't answer because of its ambiguity or because the coverage is uncertain, he can also ask, which Mr. Tendy out of an abundance of patience and with commendable fairness explained at great length to this witness.

Mr. Kossman: Of course, earlier, if the Court.

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please,—if the past is any guide to the future—when we had these questions,—

Judge Herlands: We are getting off the track, Mr. Kossman.

Mr. Kossman: Is it possible to have a typewritten copy?

Judge Herlands: No; we'll proceed this way. There are very few questions. It's the third time they're read already.

Mr. Kossman: What's the direction?

Judge Herlands: All right; the witness is directed to answer that question, the question that's just been discussed.

Now, will you proceed.

Miss Cordes: "Aside from the meetings on the street with Luchese that you talked about—"

Mr. Kossman: I'm sorry—I'm not so fast—

Judge Herlands: You don't need to take it down in shorthand.

Miss Cordes: "Aside from the meetings on the street with Luchese that you talked about, where else did you meet with Luchese since you first appeared before the Grand Jury, or let me amend that, since the subpoena for your appearance before this Grand Jury was served upon you?"

Mr. Kossman: Am I correct—aside from the meetings with Luchese on the street, where else have you met since the subpoena—where else have you met? Is that how broad it is?

Miss Cordes: "Where else did you meet with Luchese?"

Mr. Kossman: "Where else did you meet with Luchese—?"

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Miss Cordes: "—since the subpoena was served."

Judge Herlands: The witness is directed to answer that. All right, next question.

Miss Cordes: "Who else was present at these meetings besides you and Luchese and the lawyers?"

Judge Herlands: The witness is directed to answer that. Next.

Miss Cordes: "What time of the day did these meetings take place, Mr. Pappadio?"

Mr. Kossman: What—

Judge Herlands: "What time did these meetings take place?" The witness is directed to answer that.

Miss Cordes: "How long did the meetings last?"

Judge Herlands: "How long did the meetings last?" The witness is directed to answer that. Next.

Miss Cordes: "Who arranged these meetings?"

Judge Herlands: "Who arranged these meetings?" The witness is directed to answer that.

Now, you better read the record as you have it there because there's a series of questions and rephrasing. I think in the interest of clarity just read what you have and that will develop the ultimate question.

Miss Cordes: Well, I skipped his last answer. "Let me ask you this, Mr. Pappadio. Is it your testimony that excluding the time you met Luchese at his home and the times you met him in the street and on the other occasions where you met with him, were attorneys present?"

Mr. Kossman: I'm sorry, I have difficulty following that.

Judge Herlands: All right, just read it as it is.

Reporter: "Is it your testimony that excluding

*Government's Exhibit 12*

the time you met Lucchese at his home, and the times you met him on the street, and on the other occasions where you met with him, there were attorneys present?" And, "Do you understand my question?" And the answer is, "Say it over again."

Judge Herlands: All right, now, suppose you go ahead.

Reporter: I'll go ahead. "Is it your testimony that excluding the occasions where you met with Lucchese at his home, and the occasions where you met with him on the street, as you told us about earlier, and the other times you met with him, there were attorneys present?"

Judge Herlands: What's the answer?

Reporter: "I refuse to answer on the grounds of the First, the Fifth and Sixth Amendments."

Judge Herlands: Will you continue reading ahead?

Reporter: That's where he begins, "I think you're getting tricky, Mr. Tendy."

Judge Herlands: All right, now, I recall that discussion. What's the next question after the discussion? And I think Mr. Tendy then said that if there's anything he doesn't understand, he should ask. And did Mr. Tendy come back to a question?

Reporter: I think that's the last question.

Judge Herlands: Well, the last question, as the record stands, is a question in which the witness was asked with regard to meetings where attorneys might have been present, and the meetings referred to are meetings other than meetings between the witness and Lucchese at Lucchese's home, or meetings with Lucchese on the street or other occasions.



*Government's Exhibit 12*

And stated in plain English, they're asking the witness whether there were any meetings with Lucchese at which lawyers were present; and that, in order to focus the question, Mr. Tendy excluded a previous question about meetings with Lucchese on the street or at the home of Lucchese. And this question is a question which may be paraphrased to mean, "Did you ever meet with Lucchese on an occasion at which lawyers were present?" Is that the question?

Mr. Tendy. That's it, Your Honor.

Judge Herlands: All right. So, if such a question is asked,—I'm especially addressing the witness, so that there won't be any doubt as to which question we're asking,—if you are asked, Mr. Pappadio, whether there were any meetings with Lucchese at which lawyers were present, you will have to answer that question; do you understand that?

Witness: Yes, sir.

Judge Herlands: All right.

Mr. Lawler: I want to state at this time that we also intend to ask the witness where these meetings took place.

Judge Herlands: Well, I've explained to Mr. Pappadio that the privilege between the client and the lawyer relates only to communications between the lawyer and the client, and the client and the lawyer, but it does not relate,—it does not cover where the lawyer's office was when he met with the lawyer, how long the meetings lasted, what the retainer was,—other questions not concerned with what was said between the lawyer and the client.

Mr. Lawler: We have nothing additional, Your Honor.

*Government's Exhibit 12*

Judge Herlands: All right. The witness is directed to answer the specific questions that have come before us, and for his guidance I've given general instructions and directions, so that we may avoid the necessity of having to come back here again. But if it's necessary to come back here again, we have inexhaustible patience. And I think that everybody connected with this case had better realize by this time that the sooner these questions are answered, the better. Because whatever time is necessary to go through the formalities, we will devote to it.

Mr. Lawler: With Your Honor's permission, rather than travel back to the fourteenth floor, we'd like to use this courtroom as a jury room, and continue here.

Judge Herlands: All right; I hereby declare this room #318 to be a room for the use of the Grand Jury, with the same force and effect as if it were on the fourteenth floor; if you need such a ruling.

All right, Mr. Kossman, you're excused.

Mr. Kossman: Last time, I asked for fifteen minutes and it was granted, and we had a satisfactory result, in the sense that we were prepared.

Judge Herlands: We see no reason for it.

Mr. Kossman: Could I have ten minutes?

Judge Herlands: There's no reason for it. I've given instructions; the questions are clear and simple, and I think that any further delay is not called for.

Mr. Kossman: If the Court pleases, I'm faced with the proposition that he has refused, and it was before we heard the instructions. I'm only asking

*Government's Exhibit 12*

for, let us say, five minutes, in order to give him my views on the subject.

Judge Herlands. Will you grant Mr. Kossman five minutes?

Mr. Tendy: We have no objection.

Judge Herlands: All right. Five minutes. The time is now twenty-five to two, and the Grand Jury will go into session at twenty to two.

Mr. Kossman: Thank you.

Judge Herlands: All right.

\* \* \* \* \*

Mr. Tendy: Mr. Foreman, would you remind the witness that he's still under oath?

Foreman: Mr. Pappadio, you're still under oath.

The Witness: Thank you.

*By Mr. Tendy:*

Q. Mr. Pappadio, who were the attorneys who were present at these meetings? A. I respectfully decline to answer on the grounds of the First, the Fifth and the Sixth Amendment.

Q. Aside from the meetings which you described, which took place on the street, where else did you meet with Lucchese? A. I decline to answer, under the First, the Fifth and the Sixth Amendment.

Q. Who else was present at these meetings beside yourself, Lucchese and the attorneys? A. I respectfully decline to answer under the First, the Fifth and the Sixth Amendment.

Q. What time of day did these meetings take place? A. It was daytime; the exact time I don't know.

*Government's Exhibit 12*

Q. Was it in the afternoon? A. Afternoon? Afternoon.

Q. Would it have been in the evening? A. I might have walked into there maybe five, six o'clock, seven o'clock.

Q. How long did these meetings last? A. I don't recall how long they lasted.

Juror: We can't hear him.

Mr. Tendy: Why don't you turn around?

Witness: I don't recall how long they lasted.

Q. Did some of them last an hour? A. I don't really remember.

Q. Did they last less than an hour? A. I don't remember. I didn't watch the watch, how long it lasted, how long it didn't last.

Q. Well, give me your best recollection, Mr. Pappadio. I realize fully that it's an approximation as to the length of time. A. A couple of hours.

Q. All right; how many of such meetings were there? A. I respectfully decline to answer on the grounds of the First, the Fifth and the Sixth Amendment.

Q. Who arranged the meetings? A. They probably were arranged by our lawyers.

Q. Do you know? A. Well, my lawyer called me in the office and told me we were going to meet; that's all I know. Whether we met in his office or somebody else's office, he'd be the one who called me and told me we were to get together.

Q. Now, when you say "my lawyer", "the other lawyer", which lawyer are you referring to? A. To Lauritano, at the time. I don't know who called the meetings. I don't know who called the meetings; which lawyer called who.

*Government's Exhibit 12*

Q. Where did the meetings take place? A. I respectfully decline under the First, the Fifth and the Sixth Amendment.

Q. The record indicates that so far as these Grand Jury proceedings are concerned, Mr. Lauritano ceased to represent you some time in August, whatever the date was, whenever the date was. Now, since he ceased to represent you in these proceedings, have you had any such meetings with Lucchese? A. I don't know what you mean by "ceased", Mr. Tendy.

Q. Do you remember, in August, Mr. Pappadio, you appeared before the Grand Jury on one occasion, whatever the date was, and it's not important when it was. It was some time in August, and you told the Grand Jury generally that Mr. Lauritano no longer represented you? Do you recall that? A. Do you want me to tell you how that happened, Mr. Tendy?

Q. No, I don't. It's not important right now, Mr. Pappadio. My question is, since that occasion when you told us he no longer is your lawyer, have you met with Mr. Lucchese? A. I still go to Mr. Lauritano for legal advice.

Q. That's not my question. Since the occasion when you told the Grand Jury that he's not your lawyer in these proceedings, have you, since that time, met with Lucchese? A. Where?

Q. Any place. A. In the street, do you mean?

Q. Any place at all. A. I met with Mr. Lucchese.

Q. How many times? A. I don't remember how many times. I met just like—I don't remember how many times.

Q. Where did you meet him? Now, we're talking, now, since the time that Lauritano, Mr. Lauritano, stopped representing you on your appearance before the Grand Jury? A. Mr. Lauritano still represents me, Mr. Tendy. Not in

*Government's Exhibit 12*

this matter; not fully a hundred percent in this matter, because of constitutional law here. So I use Mr. Kossman.

Q. I understand you completely; but since the occasion when you told the Grand Jury that Lauritano did not represent you, my question is,—let me rephrase it. Since the occasion when you told the Grand Jury that Lauritano did not represent you in these proceedings, where have you met Lucchese? A. Was that one of the questions I was just directed to answer?

Q. No, but in general— A. Well, can I talk to my attorney?

Q. There's no reason for you to talk to your attorney. A. Well, then, I'll take the First, Fifth and the Sixth.

Q. But you have met with Lucchese, isn't that right? A. I'll take the First, Fifth and Sixth.

Q. But you just told me you did meet with him. A. I'll take the First, the Fifth and the Sixth Amendment.

Mr. Tendy: Mr. Foreman, would you instruct this witness that he's excused, subject to a twenty-four hour recall?

Foreman: You're excused subject to a twenty-four hour recall.

Witness: Thank you.

Mr. Tendy: Mr. Pappadio, on second thought, would you just wait in the hallway, please?

(Witness leaves room.)

(Witness Andimo Pappadio returns.)

Foreman: The witness is still under oath, right, Mr. Tendy?

Mr. Tendy: Thank you.

*Government's Exhibit 12*

Q. Mr. Pappadio, aren't you also known as Tommy Paps? A. I don't know if anybody called me by that name in many, many years—from the school days. That's my school days. The teacher called me by that name.

Q. Mr. Pappadio, I'm now going to ask you some of the questions that Judge Herlands directed you to answer on the time you were before him prior to today. The first one is this Mr. Pappadio—At the narcotics trial of Vito Genovese there was testimony that you attended a meeting at the home of Rocco Mazzie. Did you attend this meeting? A. No, sir.

Q. Do you know of such a meeting? A. No sir.

Q. Do you know Rocco Mazzie? A. No sir.

Q. Do you know a person named Roggie? A. No sir.

Q. Do you know Vito Genovese? A. Met him in this courtroom, I think—318 here.

Q. Is this your only contact with him? A. That's the only contact.

Q. Do you know Vincent Gigante, or a person by that name? A. No, I didn't know him at all. Never met him here.

Q. Have you taken any trips to Europe or any place else outside of the continental United States in the past ten years? A. Yes sir.

Q. To where? A. I went to see my daughter in Italy.

Q. When was this, Mr. Pappadio? A. '57 and '58.

Q. Did you make a trip each year or did it overlap? A. A trip in each year.

Q. Did you have any business dealings with anybody on these trips? A. When you say business dealings, Mr. Tendy, you mean if I went to buy perfume and stuff like that?

*Government's Exhibit 12*

Q. I'll tell you what, Mr. Pappadio, I'll withdraw the question. A. All right.

Q. Let me withdraw the question. A. I'm becoming half a lawyer around here.

Witness: Want to know what I said? I said I'm becoming half a lawyer around here.

Q. That's it, Mr.— A. How about 1962 income tax? You want to ask me that question too?

Q. No. A. Okay. Thank you.

(Witness excused.)



**Defendant's Exhibit A**

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

Cr. 156-157

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THE UNITED STATES,

VS.

#30

ANDIMO PAPPADIO,

Defendant.

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Violation of: T. 21

Secs. 173 and 174, U.S. Code

Unlawful conspiracy to violate the U.S. Narcotics Laws

(One count)

7-7-58—Filed Indictment. \* \* \*

\* \* \* \*

12-1-58—Govt moves to sever deft Andimo Pappadio,  
granted.

HICKS, J.

This is a true extract of part of the entry  
of 12-1-58, ONLY.

September 3, 1964

JAMES E. VALECHE, Clerk

By C. J. WALLACE

Deputy Clerk

**Judgment and Commitment Appealed From**

(118)

**UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

No. 64 Cr. 897

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**[SAME TITLE]**

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On this 30th day of October, 1964 came the attorney for the government and the defendant appeared in person and by counsel.

IT IS ADJUDGED that the defendant having been found guilty of criminal contempt in that he wilfully disobeyed the lawful orders of this Court by his refusal on October 13, 1964 to answer questions which he was ordered and directed by this Court to answer on August 4, 1964 and October 13, 1964 and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

IT IS ADJUDGED that the defendant is guilty of criminal contempt and convicted.

IT IS ADJUDGED that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for a period of Two (2) Years, or until further order of this Court, should Andimo Pappadio answer before the Grand Jury the questions which appear on the record as he was ordered to answer and should defendant answer those questions before the expiration of said sen-

*Judgment and Commitment Appealed From*

tence or the discharge of said Grand Jury, whichever may first occur, the further order of this Court may be made terminating and modifying the sentence of imprisonment.

IT IS ADJUDGED that the defendant's oral motion for bail pending appeal is denied.

IT IS ORDERED that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

WILLIAM B. HERLANDS  
*United States District Judge*

JAMES E. VALECHE  
*Clerk*

**Notice of Appeal**

( )

**UNITED STATES DISTRICT COURT**

**SOUTHERN DISTRICT OF NEW YORK**

**64 Cr 897**

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[SAME TITLE]

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Name and address of appellant: Andimo Pappadio, 121 Eva Drive, Lido Beach, New York.

Name and address of appellant's attorney: Lauritano, Schlaeter & Schneider, 205 West 34th Street, New York, New York. Of Counsel: Jacob Kossman, 1325 Spruce Street, Philadelphia, Pennsylvania; Philip R. Edelbaum, 250 Broadway, New York, New York.

Offense: Criminal Contempt of Court, Rule 42B, F. R. Criminal Procedure, Title 18, U.S.C., §401.

Concise statement of judgment or order, giving date, and any sentence: Convicted of criminal contempt on October 30, 1964 by William Herlands P.J. and sentenced to 2 yrs.

Name of institution where now confined, if not on bail: Paroled in attorney's custody pending application for bail to Court of Appeals.

I, the above-named appellant, hereby appeal to the United States Court of Appeals for the Second Circuit from the above-stated order and judgment.

ANDIMO PAPPADIO,  
Appellant

Dated: October 30, 1964  
New York, New York

[fol. 240]

IN THE UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

No. 248—September Term, 1964.

Argued November 18, 1964

Docket No. 29298

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UNITED STATES OF AMERICA, Appellee,

—v.—

ANDIMO PAPPADIO, Defendant-Appellant.

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Before: Lumbard, Chief Judge, Medina and Marshall,  
Circuit Judges.

Appeal from an order of the United States District Court  
for the Southern District of New York, William B. Her-  
lands, J., which adjudged the appellant guilty of contempt  
for his refusal to answer questions before a federal grand  
jury.

Affirmed.

[fol. 241] John E. Sprizzo, Assistant United States  
Attorney, New York, N. Y. (Robert M. Morgen-  
thau, United States Attorney for the Southern  
District of New York, and John S. Martin, Jr.,  
Assistant United States Attorney, New York,  
N. Y., on the brief), for appellee.

Maurice Edelbaum, New York, N. Y. (Philip R.  
Edelbaum and Lauritano, Schlacter & Schneider,  
New York, N. Y., and Jacob Kossman, Philadel-  
phia, Pa., on the brief), for defendant-appellant.

## OPINION—May 24, 1965

LUMBARD, Chief Judge:

Andimo Pappadio appeals from a conviction for contempt for refusing to answer five of the questions put to him by a federal grand jury sitting in the Southern District of New York. We find the conviction and sentence to be proper, and we affirm the judgment of the district court.

As part of the grand jury's inquiry into alleged violations of the federal narcotics laws, it had Pappadio summoned before it. On February 14, 1964 and again on April 24 and May 8, he was asked numerous questions, but he gave only his name and some other biographical information; he refused to answer the other questions on the ground that his answers would tend to incriminate him.

On the government's application, Judge MacMahon on August 4, 1964 issued an order under 18 U. S. C. §1406,<sup>1</sup>

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<sup>1</sup> "§1406. Immunity of witnesses

"Whenever in the judgment of a United States attorney the testimony of any witness, or the production of books, papers, or other evidence by any witness, in any case or proceeding before any grand jury or court of the United States involving any violation of—

(1) any provision of part I or part II of subchapter A of chapter 39 of the Internal Revenue Code of 1954 the penalty for which is provided in subsection (a) or (b) of section 7237 of such Code,

(2) subsection (c), (h), or (i) of section 2 of the Narcotic Drugs Import and Export Act, as amended (21 U. S. C., sec. 174), or

(3) the Act of July 11, 1941, as amended (21 U. S. C., sec. 184a), is necessary to the public interest, he upon the approval of the Attorney General, shall make application to the court that the witness shall be instructed to testify or produce evidence subject to the provisions of this section, and upon order of the court such witness shall not be excused from testifying or from producing books, papers, or other evidence on the ground that the testimony or evidence required of him may tend to incriminate him or subject him to a penalty or forfeiture. But no such witness shall be prosecuted or subjected

[fol. 242] which directed Pappadio to testify and granted him immunity from prosecution with respect to such testimony. However, Pappadio again refused to testify when he appeared before the grand jury later that day and on October 6. (At these and earlier appearances he sometimes cited the First Amendment as well as the Fifth.)

On October 8, Judge Herlands specifically ordered Pappadio to answer the grand jury's questions, and Pappadio did answer some questions the following day. But he refused to give any information concerning his meetings with Tommy Lucchese and, it appears, one or more lawyers. He based his refusal principally on the attorney-client privilege but also on the First, Fifth and Sixth Amendments.

After a hearing before Judge Herlands, who found his claim of privilege to be without merit, Pappadio answered [fol. 243] questions as to the duration and time of day of the meetings. However, he still refused to answer five of the questions, and these are the questions at issue on this appeal:

"Mr. Pappadio, who are the attorneys who were present at these meetings?"

"Aside from the meetings which you described, which took place in the street, where else did you meet with Lucchese?"

"Who else was present at these meetings besides yourself, Lucchese and the attorneys?"

"All right. How many of such meetings were there?"

"Where did the meetings take place?"

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to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, nor shall testimony so compelled be used as evidence in any criminal proceeding (except prosecution described in the next sentence) against him in any court. No witness shall be exempt under this section from prosecution for perjury or contempt committed while giving testimony or producing evidence under compulsion as provided in this section."

A hearing pursuant to Rule 42(b) of the Federal Rules of Criminal Procedure was held on October 28 and 30. Judge Herlands found Pappadio guilty of contempt and sentenced him to imprisonment for two years or "until further order of the Court" if Pappadio answered the questions before his sentence expired or the grand jury was discharged, whichever first occurred.

Pappadio's principal challenge to his conviction is that he was privileged not to answer the questions, despite the grant of immunity under §1406. Three grounds are put forward for the claimed privilege. The first is that he is under indictment for alleged violation of the federal narcotics laws. The likelihood that Pappadio will now be prosecuted under this indictment, which was filed in 1958, appears not to be great; seventeen of the thirty-seven defendants named in the indictment were tried and convicted in 1959, see *United States v. Aviles*, 274 F. 2d 179 (2 Cir.), cert. denied, 362 U. S. 974 (1960), but we are informed that Pappadio's name has not even appeared on the trial [fol. 244] calendar since 1958. Moreover, the meetings as to which Pappadio was questioned took place in 1963 or later,<sup>2</sup> over six years after the most recent act alleged in the 1958 indictment.

In any event, Pappadio suggests no way in which the pendency of the 1958 indictment renders the immunity granted under §1406 insufficient to protect him from being incriminated by his answers. Pappadio does point out, correctly, that the immunity does not bar the government from prosecuting him under the indictment or for perjury in the testimony he may give before the grand jury. The danger of such prosecutions is something different than the danger of self-incrimination, however, and the protection of §1406—like that of the constitutional privilege which it replaces—is directed only at the latter. Section 1406 does effectively

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<sup>2</sup> Pappadio was questioned as to meetings which occurred subsequent to commencement of proceedings before the grand jury, which was impaneled in September 1963.



protect the witness from being prejudiced in any criminal proceeding as a result of his answers; it creates a defense to prosecution for acts as to which he is compelled to testify, and it bars the use of such testimony against him in a prosecution for any other acts.<sup>3</sup>

If Pappadio is required to give any testimony relating to the matters charged in the 1958 indictment, in response either to the questions now at issue or to subsequent questions, he could then move to have the indictment dismissed [fol. 245] as to himself. And even if his answers are not ~~such~~ as to entitle him to dismissal of the indictment, he is protected against the answers being used against him in any criminal proceeding, including one under the pending indictment.

It appears to be Pappadio's position, however, that protection against self-incrimination is insufficient in this case because the privilege not to testify before a grand jury while under indictment is part of the privilege of a criminal defendant not to testify at trial, a privilege which goes beyond the privilege against self-incrimination. See *Piemonte v. United States*, 367 U. S. 556, 565 (1961) (Douglas, J., dissenting). The legitimate interests of a witness before a grand jury, even a witness under indictment, would seem to be sufficiently protected by the privilege against self-incrimination. And, apart from the *Piemonte* dissent, we find no authority for also extending to such a witness the privilege not to testify at all, even where given immunity.

The second and third grounds offered for the claim of privilege are that the requested facts are protected by the attorney-client privilege and that the questions interfere

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<sup>3</sup> By its express terms, §1406 does not protect a witness from prosecution for perjury committed while testifying under that section's compulsion. Such a limitation has been held not to make a statutory grant of immunity an inadequate substitute for the Fifth Amendment privilege. *Glickstein v. United States*, 222 U. S. 139 (1911). The theory of *Glickstein* is that the Fifth Amendment protects only against self-incrimination with respect to past acts, not with respect to the testimony being given.

with the right to effective representation by counsel guaranteed by the Sixth Amendment. The factual premise for both grounds is Pappadio's allegation that the meetings were with counsel and witnesses in connection with the 1958 indictment and a possible prosecution for perjury.

Since the policies served by the attorney-client privilege go beyond protection against self-incrimination, the privilege is not destroyed by a grant of immunity from prosecution. See Note, 72 Yale L. J. 1568, 1578 (1963). Pappadio's reliance on the privilege in this case is misplaced, however. [fol. 246] On the present record we cannot determine whether the privilege could properly be asserted even with respect to the subject matter of the meetings. In any event, the grand jury has not inquired into the subject matter of the meetings, and the questions which it has asked—who was present; where did the meetings take place; who arranged them—have not touched on matters meriting the protection of the privilege. See *Colton v. United States*, 306 F. 2d 633 (2 Cir. 1962), cert. denied, 371 U. S. 951 (1963). For the same reason, the questions have in no way interfered with Pappadio's right to effective representation by counsel. Compare *Coplon v. United States*, 191 F. 2d 749 (D. C. Cir. 1951), cert. denied, 342 U. S. 926 (1952).

Pappadio also objects to his sentence. He contends that the penalty imposed for criminal contempt after only a summary trial is constitutionally limited to that provided for petty offenses. See *United States v. Barnett*, 376 U. S. 681, 695 n. 12 (1964). Read literally, the *Barnett* dictum does indeed stand for such a rule, and it appears to have been so interpreted by a majority of a panel of the Court of Appeals for the District of Columbia. See *Rollerson v. United States*, No. 17675, October 1, 1964 (2-1 decision). However, we adhere to our prior decisions, which have interpreted the *Barnett* dictum as not applying where the contempt is committed in the presence of the court and it remains possible for the defendant to comply with the court's order at the time that the contempt proceedings are begun. See *United States v. Shillitani*, No. 29117, May 18,

1965; *United States v. Tramunti*, No. 29387, April 5, 1965; *United States v. Castaldi*, 338 F. 2d 883, 885, petition for cert. filed, 33 U. S. L. Week 3223 (Dec. 17, 1964); *United States v. Harris*, 334 F. 2d 460, 463, cert. granted, 379 U. S. 944 (1964).

[fol. 247] We have considered Pappadic's contention that the questions were not shown to be relevant to the grand jury's inquiry, and we find it to be without merit.

The judgment of the district court is affirmed.

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MEDINA, Circuit Judge (concurring and in part dissenting):

I agree with my brothers of the majority on all points except the sentence to a period of two years imprisonment. This, in my opinion, is too much. We have held that this Court has power to reduce the period of imprisonment meted out for a contempt of court, see *United States v. Levine*, 1961, 288 F. 2d 272, applying the unambiguous mandate of *Brown v. United States*, 1959, 359 U. S. 41, 52, and I would reduce appellant's sentence to one year instead of two. I realize that this Court has upheld sentences of two years in similar cases, but I wish to register my dissent.

[fol. 248]

IN THE UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

Present: Hon. J. Edward Lumbard, Chief Judge, Hon.  
Harold R. Medina, Hon. Thurgood Marshall, Circuit  
Judges.

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UNITED STATES OF AMERICA, Plaintiff-Appellee,

v.

ANDIMO PAPPADIO, Defendant-Appellant.

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JUDGMENT—May 24, 1965

Appeal from the United States District Court for the  
Southern District of New York.

This cause came on to be heard on the transcript of rec-  
ord from the United States District Court for the Southern  
District of New York, and was argued by counsel.

On Consideration Whereof, it is now hereby ordered, ad-  
judged, and decreed that the order of said District Court  
be and it hereby is affirmed.

A. Daniel Fusaro, Clerk.

[fol. 249]

[File endorsement omitted]

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[fol. 250] PETITION FOR REHEARING EN BANC AND MOTION  
TO STAY THE MANDATE covering 15 pages filed June 4, 1965  
omitted from this print.

[fol. 263]

IN THE UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

[Title omitted]

ORDER ON PETITION FOR REHEARING AND MOTION TO STAY  
ISSUANCE OF MANDATE PENDING APPLICATION FOR A WRIT  
OF CERTIORARI TO THE SUPREME COURT OF THE UNITED  
STATES—June 21, 1965

Lauritano, Schlacter & Schneider, New York, N. Y.,  
for appellant.

The motion for rehearing is denied.

The motion to stay our mandate is granted, subject to  
the conditions of our Rule 28(c).

J. E. L., H. R. M., T. M., U.S.C.JJ.

Jun 21 1965.

[fol. 264]

[File endorsement omitted]

[fol. 267]

IN THE UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

[Title omitted]

ORDER DENYING PETITION FOR REHEARING IN BANC—  
June 21, 1965

Lauritano, Schlacter & Schneider, New York, N. Y.,  
for appellant.

As no active circuit judge has requested that this case be  
reheard in banc, and as Judge Medina, who is qualified to

vote thereon by virtue of 28 U. S. C. § 43 votes to deny, the petition is denied.

J. Edward Lumbard, Chief Judge.

Jun 21 1965.

[fol. 268] [File endorsement omitted]

[fol. 271] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 272]

SUPREME COURT OF THE UNITED STATES

No. ...., October Term, 1965

[Title omitted]

ORDER EXTENDING TIME TO FILE PETITION FOR WRIT OF  
CERTIORARI—July 6, 1965

Upon Consideration of the application of counsel for petitioner,

It Is Ordered that the time for filing a petition for writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and including August 19th, 1965.

John M. Harlan, Associate Justice of the Supreme Court of the United States.

Dated this 6th day of July, 1965.

[fol. 273]

SUPREME COURT OF THE UNITED STATES

No. 442—October Term, 1965

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ANDIMO PAPPADIO, Petitioner,

v.

UNITED STATES.

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ORDER ALLOWING CERTIORARI—November 15, 1965

The petition herein for a writ of certiorari to the United States Court of Appeals for the Second Circuit is granted limited to Questions 1, 2 and 3, presented by the petition which read as follows:

"1. Whether petitioner should have been granted a trial by jury on a charge of criminal contempt of court where he has been sentenced to two years' imprisonment.

"2. Whether the District Court could legally sentence petitioner to two years' imprisonment for contempt of court following a non-jury hearing under Rule 42(b) of the Federal Rules of Criminal Procedure.

"3. Whether, assuming *arguendo* that a sentence of two years may be imposed for criminal contempt without a trial by jury, there was an abuse of discretion in sentencing petitioner to two years' imprisonment for refusing to answer five questions where he had answered more than one hundred questions."

The case is placed on the summary calendar and set for argument immediately following No. 412.

[fol. 274] And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.